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IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1983

ELLEN SCHALL, as Commissioner of the New York City Department of Juvenile Justice,

Appellant,

and

ROBERT ABRAMS, as Attorney General of the State of New York,

Intervenor-Appellant,

against

GREGORY MARTIN, LUIS ROSARIO, KENNETH MORGAN, and all others similarly situated,

Appellees,

On Appeal From the United States
Court of Appeals for the
Second Circuit

BRIEF FOR AMICUS CURIAE NATIONAL LEGAL AID AND DEFENDER ASSOCIATION IN SUPPORT OF AFFIRMANCE

MICHAEL J. DALE
111 West Monroe
Suite 1400
Phoenix, AZ 85003
(602)254-6071
Attorney for Amicus
Curiae

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INTEREST OF AMICUS CURIAE

The National Legal Aid and Defender Association (hereinafter referred to as "NLADA") is a not for profit organization whose primary purpose is assistance in the provision of effective legal services to persons unable to retain counsel because of their indigency. Its membership includes the great majority of public defender offices, co-ordinated assigned counsel systems, and free legal services agencies throughout the United States. NLADA also includes 2,000 individual members, most of whom are private practitioners.

NLADA joins appellee in seeking affirmance of the decision of the United States Court of Appeals for the Second Circuit that the New York State statutory scheme and practice authorizing pretrial detention of juveniles violate the due

process clause of the Fourteenth Amendment since the statute is used principally to impose punishment for unadjudicated delinquent acts and not for preventive purposes. Because its members represent vast numbers of juveniles in delinquency proceedings nationwide, NLADA is keenly aware of the risks and errors in the pre-trial detention decision-making process as well as the conditions of confinement once a young person is so detained. In fact, NLADA members have often brought litigation on behalf of the juveniles detained in these facilities. NLADA wishes to bring to the court's attention the facts concerning the conditions in detention centers in which juveniles are held.

Both parties have provided consent to the filing of this brief.

SUMMARY OF ARGUMENT

This court has regularly ruled that constitutional rights apply to juveniles. These rights include the due process right to personal liberty. Intervenor-appellant and amici supporting reversal suggest that a juvenile's liberty interests are of less significance because of the substantial benefits a child receives while in pre-trial detention. The facts of life in pre-trial detention for juveniles is quite different from that environment suggested by the parties and organizations seeking reversal. Detention centers, like jails, are often punitive places. They may lack medical services, educational programs, recreational facilities and counseling resources. Physical conditions violate myriad building, health and safety codes and regulations. Children may be held in

isolation, and may be deprived of access to telephone, mail and personal contacts with family, friends and attorneys. Detention centers are often inhuman places that do great harm to the juveniles detained in them.

ARGUMENT

Conditions of Confinement for Juveniles Held in Pre-Trial Detention Centers Throughout the United States are Unnecessarily Punitive and Harmful

This court has repeatedly recognized that juveniles, both in the juvenile court process and in other court proceedings, have constitutionally protected rights, including the right to due process of law in order to protect liberty interests. In Re Gault, 387 U.S. 1 (1967); Breed v. Jones, 421 U.S. 519 (1975) and In Re Winship, 397 U.S. 358 (1970). Although recognizing that constitutional protections apply to juveniles and more specifically agreeing that juveniles have a liberty interest which is protected by the due process clause of the Fourteenth Amendment, the Intervenor-Appellant and amicus curiae attorneys general raise the proposition that this liberty interest may

be compromised in order to help children [Brief of Intervenor-Appellant Attorney General of the State of New York at page 36, n. 1]. In his amicus curiae brief, the Attorney General of the State of Pennsylvania argues at page 21 that "by the use of preventive detention in cases in which it is likely that the child will soon commit another crime, the juvenile justice system seeks to break the pattern, spare the child additional rehabilitation or punishment, and aid the child in maturing into a law-abiding citizen." The Attorney General of the State of New York argues that a juvenile's transfer from the custody of his parents to the custody of a local detention agency pursuant to New York State law "involves only questions of degree, not kind." (Intervenor-Appellant's Brief, page 36, n. 1.) The attorney general also describes secure detention in

New York as a self-contained facility making available education, recreation, meals, counseling and medical care on the premises. Id. at 11, n. 3.

This argument is both subtle and incorrect. As the following analysis demonstrates, detention facilities throughout the United States are anything but beneficent. The same is true for jails where juveniles are detained in equally large numbers. For a full analysis of conditions in jails, the court's attention is respectfully directed to the brief amicus curiae of the Youth Law Center of San Francisco in support of appellees.

The history of pre-trial detention in the nation's juvenile detention facilities is described in substantial detail in books and studies as well as in recent litigation in the federal courts. In

1979, 451,810 juveniles were admitted to detention centers nationwide. General Accounting Office Report to the Attorney General and the Secretary of the Interior. Improved Federal Efforts Needed to Change Juvenile Detention Practices (March 22, 1983). The GAO report analyzed five state systems and concluded that often questionable detention still occurred, most detained females were not charged with serious offenses, a substantial portion of juveniles were detained for long periods of time, and in many instances the standards for conditions in juvenile detention facilities promulgated by the National Advisory Council to the Office of Juvenile Justice were not met. The GAO found that "[d]uring our visits, State and local officials attested to the negative effects of long detention stays. According to the officials, one of the

major problems associated with long stays involved the concept of "lost time" -- time spent in secure detention that does not reduce the time subsequently spent in treatment programs. Juveniles realize this and become frustrated and anxious for quick resolution of their cases. The officials said that this frustration is often heightened because for many juveniles, parents, friends, and court counsellors rarely visit or phone." GAO Report, page 12. This conclusion stands in stark contrast to the suggestion of intervenor and amicus that such detention facilities help children.

The repugnant and often times constitutionally defective nature of detention centers has been graphically described in both court decision and popular literature. One such example is the New York City detention facility

wherein the plaintiffs/appellees in this case were housed. Spofford, as it is commonly known, or in prior times the "youth house," has been in continuous operation since 1958. It has been the topic of virtually continuous controversy over such issues as conditions and location for this entire period. See L. Cole, Our Children's Keepers (Fawcett, 1972). It has been the subject of repeated public studies and investigations. See generally An Inquiry Into the Juvenile Centers Operated by the Office of Probation, a Report Issued by Joseph Stone, Chairman, Submitted to the Appellate Division of the Supreme Court, First and Second Judicial Departments (January 1971); Citizens Committee for Children of New York, Juvenile Detention Problems in New York City, New York (1970). Report of the Committee on Public

Safety: Spofford Juvenile Detention Center, the City Council of New York (April 1978); Mayor's Task Force on Spofford: First Report (June 1978).

The terrible circumstances found there finally became the subject of federal court litigation in the mid-1970's. Martarella v. Kelley, 349 F. Supp. 575 (1972); 359 F. Supp. 478 (1973). In a sweeping decision concerning conditions in the three detention facilities then existing in New York - Spofford as well as Zerega and Manida - the federal court applied constitutional protections to the juveniles in those facilities.

Martarella actually was a challenge to conditions of confinement of status offenders, known in New York as persons in need of supervision (PINS). However, as the court noted in its second decision,

the standards of treatment for PINS would be the same for the delinquent children with whom the PINS were housed at the center even though the delinquents were not included in the plaintiff class. Martarella at 481, n. 1. In the court's first opinion it described the conditions in substantial detail, citing repeatedly from the trial record.

> It will be noted that all of centers are located in the East Bronx. Since they are the only detention centers in the city for PINS, their location in one corner of the metropolis makes it a long journey for many family visitors who come from Queens, Brooklyn and Staten Island, and acts to limit the actual number of visits which the children receive.

Martarella v. Kelley, 349 F. Supp. at 581.

The court went on to find that the facilities were punitive in nature, used restraints and discipline, lacked adequate treatment and staff training, and

therefore were constitutionally inadequate. Id. at 584-602.

The problems at Spofford did not end with the court opinions in Martarella nor with its Ombudsman's decision of March 26, 1975 in which the court ordered that an individual be hired to work at the facility and represent the interests of the detained juveniles. Martarella v. Kelley, 71 CIV 3130 (Order dated March 26, 1975). Subsequently, in 1978, the New York City Council Safety Committee conducted an inquiry into conditions at Spofford and issued a report in which it found that "security is difficult to attain, the experience for the youths is depersonalizing and traumatizing and the costs are excessively high." Report of the Committee on Public Safety: Spofford Detention Center, the City Council of New York at 12 (April 1978). The committee

then concluded that the facility must be closed. Since that time, the current Commissioner of Juvenile Justice of the City of New York and her predecessor have sought to decentralize pre-trial detention and reduce the numbers of juveniles held in the city's facilities.

New York City, of course, is not the only municipality whose juvenile detention center for pre-trial detainees has been the subject of extensive federal court litigation. The same is true of Philadelphia.

Santiago v. Philadelphia, 435 F. Supp. 136 (1977); 72 F.R.D. 619 (E.D. Pa. 1976) was a civil rights action brought by juvenile residents of the Youth Study Center in Philadelphia who challenged conditions of confinement and treatment as pre-trial detainees. After making two preliminary rulings on class certification

and a motion to dismiss, the court approved a stipulation and partial settlement in December of 1978. The elements of that settlement are significant and substantial. They include protections concerning mail and telephone usage, hours and circumstances of visitation, dress and personal property, recreation, medical services, physical and psychological abuse, isolation, diet, sanitation, safety and hygiene, and physical facilities and environment.

These conditions were not far removed from those described in 1970 by Lois G. Forer in a popular piece of literature concerning the Pennsylvania juvenile court system. L.G. Forer, No One Will Listen (Grosset's Universal Library, 1971) at 106-134.

The lack of special benefits to juveniles resulting from detention and in

stark contrast, the onerous and often repugnant conditions in these detention centers, are further demonstrated in a series of consent degrees resulting from federal court actions filed around the country. Thomas v. Mears, 474 F. Supp. 908 (E.D. Ark. 1979), was a class action challenge to procedures employed and conditions maintained at the Pulaski County, Arkansas juvenile detention center which facility services the city of Little Rock. The omnibus decree contains a substantial segment directed to types and conditions of confinement. It governs such basic necessities as allowing the children to wear civilian clothes. Children are to be allowed daily visits from their families and attorneys. The children held in secure detention shall be allowed out of their cells during the day, may use toilet facilities outside their

cells, may get their meals outside their cells, and may attend classes if detained for more than five days. Those held for more than twenty-four hours will have an opportunity to engage in recreation outside their cells. Recreation, pursuant to the decree, includes at least two hours of daily outdoor recreation weather permitting and includes such indoor activities as watching television, ping pong, card games, weight lifting, and the like. Thomas at 911-912. Finally, the defendant public officials agreed to seek appropriate funding to renovate, reconstruct and improve the physical plant of the detention center.

An equally extensive consent decree was entered in Inmates of Judge John J. Connelly Youth Center v. Dukakis, No. 75-1786-G (D. Mass. 1976), a case concerning the Roslindale, Massachusetts

detention facility. In that case, the decree covered such diverse matters as mail, telephone use, visitation, access to legal assistance in the courts, dress and personal property, education and treatment programs, exercise and recreation, medical services, mental health care, physical, psychological and verbal abuse, isolation, diet, staff, sanitation, safety and hygiene, grievances, and monitoring and reporting. The limitations on personal freedom in this facility which required correction through litigation were multitudinous. For example, detainees were to be provided with clothing purchased by the facility but which would be equivalent to that worn by most adolescents. Schooling was to be provided in a tutorial program which would include remedial instruction. This meant that each detainee would receive four hours of

educational instruction per day with at least two hours of academic subjects. A minimum of two hours of outdoor recreation on school days and a minimum of four hours on non-school days was provided. There was to be additional indoor recreation. The consent decree provided that each detainee would be examined by a registered nurse or doctor within twenty-four hours of admission and at intervals of four months or less thereafter. The parties agreed that there would be twenty-four hour emergency medical, psychiatric and dental treatment. The defendants agreed not to deprive the detainees of meals nor to engage in corporal punishment. The defendants agreed to give each detainee a clean mattress, blanket, sheet, pillow case, towel, pillow, soap, toothpaste and toothbrush. Towels were to be changed twice per week. It was agreed that the

toilets and lavatories would have partitions.

A similarly extensive consent decree was entered just a year ago by the United States District Court for the Western District of Washington in Clarence M. v. Board of County Commissioners of Yakima County, et al., No. C-78-166 (E.D. Wash. 1982). This was a civil rights action challenging the conditions of confinement at the Yakima County Juvenile Detention Center in the State of Washington. The decree governed a panoply of conditions. For example, the defendants agreed to obtain the services of a qualified fire and safety officer to review all policies and procedures related to safety and fire prevention. Automatic fire alarm and heat and smoke detention systems were to be installed. Children were to be provided with clothing. They were to be provided

with stationary, envelopes and postage for mailing of letters and outgoing mail was not to be opened or read. Telephone calls were permitted as was a daily two-hour supervised visitation period. Each juvenile was entitled to one shower daily. Showering was to be protected from view from members of the opposite sex. Detention officers of the same sex were to perform the duties of body searches and pat down searches and assist the nurse if required. A program of indoor and outdoor exercise and recreation as implemented. Overcrowding was outlawed. Physical, psychological or verbal abuse by staff was prohibited. This included such actions by the staff as taunting, threatening discipline, swearing, racial slurs, and providing misinformation to juveniles. Limits were placed on isolation. Medical and mental health services were to be

provided pursuant to a contract entered into with a health provider. One hundred eighty days of school were provided as required by Washington state law.

The Los Angeles County Central Juvenile Hall has also been the subject of litigation over conditions of detention confinement. In Manney v. Cabell CV 75-3305-R (C.D. Cal., 1979), rev'd on other grounds, 654 F.2d 1280 (1981), cert. denied, sub nom. Manney v. Fare, 455 U.S. 1000 (1982), the federal district court went through the same litany of abuses as had the other federal courts. The court entered an order concerning overcrowding, hygiene, medical care, staff policies and procedures, psychiatric care, and medication. Some of the required changes included permitting juveniles to take a shower at least once per day, medical screening, and provision of appropriate

diets for those juveniles in need.

Finally, in one recent instance, a detention center was simply closed as a result of federal court litigation. In Aguilar v. Mitchell, C-77-254 (E.D. Wash., September 28, 1981) and after a trial to the court, the court ordered the Walla Walla County juvenile detention facility to be closed except for a very limited situation. The defendants could hold children when they were returned from another juvenile institution or detention facility for the purpose of making a court appearance or conferring with counsel, personal visitors, probation officers or other court related individuals. However, even under these circumstances, the children could not be confined for more than eight hours. They could not be held overnight and could not be held without constant supervision as conditions in the

detention center were just too inadequate.

CONCLUSION

For these reasons amicus urges that the judgment appealed from should be affirmed in all respects.

Respectfully submitted,

MICHAEL J. DALE
111 West Monroe
Suite 1400
Phoenix, AZ 85003
(602) 254-6071
Attorney for Amicus Curiae

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